

MEDICAL CONTESTED CASE HEARING NO. 14071

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that: (1) the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to EMG/NCV BLE, for the compensable injury of (Date of Injury).

ISSUES

A contested case hearing was held on June 16, 2014, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to EMG/NCV BLE, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by VS, ombudsman. Carrier/Respondent appeared and was represented by DMG, attorney.

BACKGROUND INFORMATION

Petitioner/Claimant a 38 year old male sustained a compensable injury on (Date of Injury), while working as a drywall finisher. While standing on a ladder in a small space, Claimant twisted and felt a sharp pain in his lower back. Evidence reveals that Claimant underwent several surgeries but still experienced low back pain. Claimant's last documented physical therapy was March 31, 2011, through May 30, 2011, for 12 visits. Because of persistent pain Claimant's treating physician requested EMG/NCV BLE for treatment.

The utilization review dated December 30, 2013, performed by GS, M.D., resulted in a denial for EMG/NCV BLE for the compensable injury of (Date of Injury).

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers'

Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The pertinent provisions of the ODG applicable to this case are as follows, to wit:

EMGs (electromyography)

Recommended as an option (needle, not surface). EMGs (electromyography) may be useful to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious. (Bigos, 1999) (Ortiz-Corredor, 2003) (Haig, 2005) No correlation was found between intraoperative EMG findings and immediate postoperative pain, but intraoperative spinal cord monitoring is becoming more common and there may be benefit in surgery with major corrective anatomic intervention like fracture or scoliosis or fusion where there is significant stenosis. (Dimopoulos, 2004) EMG's may be required by the AMA Guides for an impairment rating of radiculopathy. (AMA, 2001) (Note: Needle EMG and H-reflex tests are recommended, but Surface EMG and F-wave tests are not very specific and therefore are not recommended. See *Surface electromyography*.)

Nerve conduction studies (NCS)

Not recommended. There is minimal justification for performing nerve conduction studies when a patient is presumed to have symptoms on the basis of radiculopathy. (Utah, 2006) See also the

Carpal Tunnel Syndrome Chapter for more details on NCS. Studies have not shown portable nerve conduction devices to be effective. EMGs (electromyography) are recommended as an option (needle, not surface) to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious.

Dr. S's rationale for denial was based on the fact that the request includes NCV as part of the evaluation of lumbar radiculopathy and according to the ODG [low back] Treatment Guidelines the request was not medically necessary. Dr. S indicated that he would however, approve BLE EMG only. The case was reviewed by PL, M.D. Dr. L noted the documentation submitted for review elaborated the Claimant's complaints of low back pain despite 2 surgical interventions. Dr. L specifically noted that the ODG criteria require 1 month course of conservative therapy. No information was submitted confirming the Claimant's recent completion of any conservative treatments. Evidence presented at this hearing document Claimant's last participation in physical therapy between March 31, 2011, and May 30, 2011. There was no recent clinical documentation revealing subjective or objective findings of failed conservative therapy of at least one month.

Medical documentation and testimony were insufficient to establish that the medical treatment requested was medically necessary. Therefore, the Petitioner has failed to meet his burden to overturn the decision of the IRO that Claimant is not entitled to EMG/NCV BLE for the (Date of Injury), compensable injury.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Claimant sustained a low back compensable injury.
 - D. On (Date of Injury), Employer provided workers' compensation insurance with Zurich American Insurance Company, Carrier.
2. Carrier delivered to Claimant and Provider a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. The IRO determined that 90 EMG/NCV BLE, was not health care reasonably required for treatment for the compensable injury of (Date of Injury).
4. EMG/NCV BLE, is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that EMG/NCV BLE is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to EMG/NCV BLE, for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 EAST 7TH STREET, STE 620
AUSTIN, TEXAS 78701-3218**

Signed this 25th day of June, 2014.

Jacqueline Harrison
Hearing Officer